

**BEFORE THE TENNESSEE REGULATORY AUTHORITY  
NASHVILLE, TENNESSEE**

**December 15, 2003**

*IN RE: Complaint of US LEC Against  
BellSouth and Request for Expedited Ruling  
and for Interim Relief*

) Docket No. 03-00639  
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**COMPLAINT OF US LEC AGAINST BELL SOUTH AND REQUEST FOR  
EXPEDITED RULING AND FOR INTERIM RELIEF**

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US LEC Tennessee Inc. ("US LEC"), files the following complaint against BellSouth Telecommunications, Inc. ("BellSouth") and requests both expedited and interim relief.

**PARTIES**

1. Petitioner US LEC is a certified local exchange carrier providing service in competition with BellSouth in various locations throughout Tennessee. US LEC's official business address is:

Three Morrocroft Centre  
6801 Morrison Boulevard  
Charlotte, North Carolina 28211

2. BellSouth is an incumbent local exchange carrier providing telecommunications services in a nine-state region including Tennessee. BellSouth's official business address is:

BellSouth Telecommunications, Inc.  
333 Commerce St.  
Nashville, TN 37204

**JURISDICTION**

3. The Authority has jurisdiction to hear this complaint under T.C.A. §§ 65-4-104, 65-4-117, 65-5-208(c), and 65-5-210(a).

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## **FACTUAL BACKGROUND**

4. BellSouth has undertaken to route calls from US LEC customers to BellSouth customers in Tennessee and to offer caller ID services to BellSouth customers. Caller ID services allow the person receiving the call to know, before answering the call, the directory name and telephone number of the residence or business where the call originates.

5. US LEC has contracted with TSI Telecommunications Services, Inc. ("TSI") to provide electronic information to other telecommunications carriers, such as BellSouth, who need that information to provide caller ID service to their own customers. On behalf of US LEC, TSI entered into a Calling Name (CNAM) agreement with BellSouth to provide electronic information to BellSouth showing the names of callers who are subscribers of US LEC. On information and belief, BellSouth agreed in the CNAM agreement to use the TSI database to obtain the name of the caller when a US LEC customer calls a BellSouth customer.

7. On or about September 18, 2003, BellSouth sent TSI a letter in which BellSouth demanded that TSI amend the terms of its contract with BellSouth. BellSouth threatened to stop using the TSI database unless TSI agreed to the amendment. On information and belief, TSI did not agree to the contract amendment and BellSouth thereafter stopped obtaining caller ID information from the TSI database.

8. Since BellSouth's stopped using the TSI database, US LEC's customers in Tennessee have reported that their names are not being delivered to BellSouth customers. They report that some BellSouth customers decline to answer the phone when the name of the caller is not shown on the caller ID display. Furthermore, if the BellSouth customer subscribes to a feature called a "Privacy Director" and the caller's name is not

delivered, the Privacy Director plays a recording asking the caller to state his name. If the caller declines to state his name, the call will not be completed.

9. On information and belief, when calls are made by one Bellsouth customer to another, the caller ID information is successfully delivered.

10. BellSouth's decision to stop using the TSI database and the subsequent inability of BellSouth customers to identify by name calls from US LEC customers has, on information and belief, resulted in US LEC losing customers and failing to attract prospective customers. More importantly, BellSouth's actions are irreparably damaging to US LEC's reputation as a telecommunications carrier.

11. While BellSouth's refusal to retrieve and deliver information identifying the name of calls originating on the US LEC network is hurting Tennessee customers of US LEC and BellSouth, it is also affecting telecommunications customers throughout the region. On information and belief, the problem has become serious enough in Georgia to prompt a representative from the Georgia Commission to ask BellSouth to resume providing all caller ID information on calls originating from the US LEC network. On information and belief, BellSouth has refused to honor that request.

### **FIRST CLAIM FOR RELIEF**

12. Paragraphs 1-11 above are realleged and incorporated herein.

13. BellSouth's "Caller ID-Delux" service offers customers the ability to see the directory name and number of the calling party before answering a call. See BellSouth tariff Section A13.19.2I. The company's tariff states, "The Company will deliver all numbers/names, subject to technical limitations... unless the caller subscribes to and/or has activated Calling Number Delivery Blocking." A13.9.3A5.

14. Under Tennessee law, T.C.A. § 65-5-201, BellSouth is required to provide service in accordance with the company's lawfully approved tariffs.

15. When a US LEC customer calls a BellSouth customer, there are no "technical limitations" preventing BellSouth from accessing the TSI database and delivering to BellSouth's customer the name of the calling party. BellSouth's failure to provide that service to its customers who have subscribed to Caller ID-Delux is a violation of BellSouth's tariffs and state law.

### **SECOND CLAIM FOR RELIEF**

16. Paragraphs 1-15 above are realleged and incorporated herein.

17. Under T.C.A. § 65-4-115, no utility may "withhold or refuse to provide any service which can reasonably be demanded and furnished when ordered by the Authority."

18. The failure of BellSouth to deliver caller names to BellSouth's Tennessee customers with caller ID services is unreasonable in light of the fact that (a) the information is available to BellSouth pursuant to an existing contract, (b) BellSouth's tariffs obligate BellSouth to provide the caller's name to customers who subscribe to "Caller ID Delux" and (c) BellSouth will deliver the caller's name if the caller is a BellSouth customer.

### **THIRD CLAIM FOR RELIEF**

19. Paragraphs 1-18 above are realleged and incorporated herein.

20. Under T.C.A. § 65-5-208(c), the Authority "shall, as appropriate, ...issue orders to prohibit...anticompetitive practices."

21. The failure of BellSouth to deliver the names of callers who are customers of US LEC while continuing to deliver the names of callers who are customers of

BellSouth is unreasonably discriminatory and puts US LEC at an unfair competitive disadvantage.

#### **FOURTH CLAIM FOR RELIEF**

22. Paragraphs 1-21 above are realleged and incorporated herein.

23. US LEC is an intended beneficiary of the CNAM agreement between TSI and BellSouth.

24. Each time a US LEC customer calls a BellSouth customer, BellSouth violates its CNAM agreement with TSI by refusing to obtain originating caller name information from the TSI database.

25. Under T.C.A. § 65-4-104 and § 65-5-21(a), the Authority has broad power over the interconnection arrangements between and among regulated telephone carriers and may compel such carriers to comply with agreements made with one another where such compliance is necessary for the carriers to provide service to their customers. T.C.A. § 65-4-104 and § 65-5-210(a).

#### **PRAYER FOR RELIEF, EXPEDITED RULING AND INTERIM RELIEF**

Whenever a US LEC customer cannot complete a phone call to a BellSouth customer, US LEC loses goodwill and may well lose a customer since that customer could avoid the problem by switching to another carrier. The damage to both US LEC and its customers is incalculable and ongoing. Under these circumstances, US LEC is entitled to interim relief, pending the issuance of a final decision on this complaint,<sup>1</sup> and an expedited ruling on the merits of the complaint.

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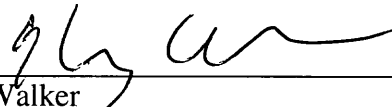
<sup>1</sup> “[W]hen a failure to grant preliminary relief creates the possibility of permanent loss of customers to a competitor or the loss of goodwill, the irreparable injury prong is satisfied.” *Multi-Channel TV v. Charlottesville Quality Cable*, 22 F.3d 546, 551 (4<sup>th</sup> Cir. 1994)

WHEREFORE, US LEC prays that the Authority:

1. Enter an order requiring BellSouth to file a response to this complaint within ten days and scheduling a hearing on this complaint within thirty days.
2. Pending the issuance of a final order on the merits of this complaint, issue an order directing BellSouth immediately to resume providing its customers with complete caller ID information on calls coming from US LEC customers.
3. Issue a final decision requiring BellSouth to abide by its contract with TSI and, when a US LEC customer calls a BellSouth customer, to use the TSI database to obtain the caller's name and deliver that name to the BellSouth customer.
4. Grant such further relief as the Authority deems just and proper.

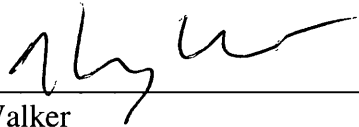
Respectfully submitted,  
BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: \_\_\_\_\_

  
Henry Walker  
414 Union Street, Suite 1600  
Nashville, Tennessee 37219  
(615) 252-2363

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on Guy Hicks by e-mail and U.S. Mail this 15<sup>th</sup> day of December, 2003.

  
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Henry Walker